

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NORTHEASTERN DIVISION**

B. A. P., a minor child by and through her parent, RICHARD PENKOSKI; and )  
RICHARD PENKOSKI, as the parent and )  
legal guardian of B. A. P., )  
Plaintiffs, )  
v. ) Case No. 2:20-cv-65  
OVERTON COUNTY BOARD OF ) Chief Judge Waverly Crenshaw Jr.  
EDUCATION, ) Magistrate Alistair Newbern  
Defendant. ) (JURY DEMAND )

**JOINT RESPONSE TO ORDERS (Doc. ## 36 and 38)**

Plaintiffs, B.A.P., and Richard Penkoski (hereinafter “Plaintiffs”), and Defendant, Overton County Board of Education (hereinafter “Defendant”), by and through undersigned counsel, respectfully file this response in compliance with this Court’s Orders (Doc. ## 36 and 38) and show as follows:

1. The parties have conferred in compliance with this Court’s Orders and respond they elect to proceed under Case Number 2:20-cv-65.
2. The parties note that a procedural issue should be presented to the Court. If this Court dismisses Case Number 2:21-cv-34 with prejudice, the entry would create *res judicata* and potentially other procedural impediments to reaching the merits. The parties are concerned this would create additional litigation. The parties also would alert the Court that the two cases are not identical. Additional facts were added to Case Number 2:21-cv-34 regarding events in August 2021.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing has been forwarded via the court's ECF/CM system to:

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on this the 14th day of September, 2021.

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